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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,394	07/24/2003	Jason Lieblich	RFS-001CP	9816
22832	7590	10/03/2006	EXAMINER	
KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP STATE STREET FINANCIAL CENTER ONE LINCOLN STREET BOSTON, MA 02111-2950			LOHN, JOSHUA A	
			ART UNIT	PAPER NUMBER
			2114	

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/626,394	<b>Applicant(s)</b> LIEBLICH ET AL.	
	<b>Examiner</b> Joshua A. Lohn	<b>Art Unit</b> 2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 22-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **FINAL REJECTION**

### ***Terminal Disclaimer***

The terminal disclaimer filed on 8/31/2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of application number 10/618,092 has been reviewed and is accepted. The terminal disclaimer has been recorded, and the obvious double patenting rejection has been withdrawn

### ***Response to Arguments***

Applicant's arguments filed 29 August 2006 have been fully considered but they are not persuasive.

With respect to applicant's arguments involving the rejection of claims 22 and 24 under 35 U.S.C. 102(e), that Harper fails to disclose the limitation of a first dataset and a second dataset being compared to determine whether the differences indicate the occurrence of an exceptional event, the examiner respectfully disagrees. The comparison of datasets by Harper is used to indicate exceptional events by eliminating those parameters that are not directly responsible for the event occurrence. This comparison works to further determine which differences are responsible for the triggering exceptional events and which are not related. A broad, reasonable interpretation of the claim language does not require that the comparison actually indicate the event responsible, only that the comparison is used to "determine whether the differences indicate the occurrence of an exceptional event". Determining which differences are not directly responsible for the event, provides an indication as to whether those differences indicate the exceptional event or not.

With respect to applicant's arguments involving the rejection of claims 23 and 25-28 under 35 U.S.C. 103(a), that Bliley fails to cure the deficiencies of Harper, examiner respectfully disagrees. The examiner feels that Harper is sufficient to cover the aforementioned deficiencies, and the proper addition of Bliley is relied upon only to provide beneficial additions to the parameter analysis of Harper as detailed in the rejection of claims 23 and 25-28.

In view of the above arguments, the previous rejection stands and is reiterated below.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 22 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Harper et al., United States Patent number 6,629,266, filed November 17, 1999.

As per claim 22, Harper discloses a method of analyzing resources and events of a first computer comprising: (a) storing in a first database located within the first computer a first dataset describing the resource and event characteristics of the first computer at a first moment in time (Harper, col. 7, lines 34-46, where the first dataset being stored is the parameter information prior to the outage, and the database for storage is the stable storage, col. 7, lines 28-29); (b) storing in the first database a second dataset describing the resource and event characteristics of the first computer at a second moment in time (Harper, col. 7, lines 56-61, where the second

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dataset is the current parameters being analyzed, which are stored in the stable storage as well, col. 7, lines 26-29); (c) comparing the first dataset and the second dataset in order to determine whether the differences indicate the occurrence of an exceptional event (Harper, col. 46-61, where the comparison is the prediction generated based upon comparison of current state to previous conditions); and (d) if an exceptional event has occurred, initiating an exception handling routine (Harper, col. 7, lines 59-61, where the exception handling routine is the rejuvenation triggered in response to the resource exhaustion prediction exception).

As per claim 24, Harper discloses wherein initiating an exception handling routine comprises notifying a human user of the exceptional event (Harper, col. 8, lines 1-7, where the rejuvenation routine can result in user notification).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harper in view of Bliley et al., United States Patent number 6,622,264, filed November 22, 1999.

As per claim 23, Harper discloses all limitations depending from claim 22, but fails to disclose that the initiating an exception handling routine comprises notifying a second computer.

Bliley discloses utilizing a second computer in the handling of an exceptional event (Bliley, col. 3, line 62, through col. 4, line 5, where the second computer is the diagnostic system shown in figure 1).

It would have been obvious to one skilled in the art at the time of the invention to use the second computer of Bliley in the invention of Harper to allow for both local learning and system-wide learning.

This would have been obvious because Bliley discloses a system for analyzing parameter values to detect probable failures (Bliley, col. 4, lines 58-61), which can be utilized in analyzing failures of computer systems such as microprocessor machines (Bliley, col. 3, lines 57-61). Bliley further discloses providing a history of events and repairs for the system that allow for controlling the response to these events based upon past actions (Bliley, col. 5, lines 35-40). Harper discloses a similar system in which active learning also allows for improving the handling of events based upon previous parameter states (Harper, col. 7, lines 34-46). Bliley not only provides a historical response system, but provides the additional benefit of providing the learning information outside of the system experiencing the problems (Bliley, col. 4, lines 57-66). This second computer system provides for the ability to gather the historical information from a number of systems (Bliley, col. 4, lines 6-22), which would obvious benefit the system of Harper by allowing the learning mechanism of Harper to better detect exceptional conditions by learning from the fault states provided by all the operating systems (Harper, col. 7, lines 46-55, where additional outage causal information provides improved learning, and col. 6, lines 22-33, where the use of multiple system nodes is disclosed by Harper). This combined invention would

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not only learn locally to react to exceptional situations, but would also allow for sending event information to a second system to allow for a global learning system.

As per claim 25, Harper and Bliley further disclose the method of claim 23 wherein the second computer comprises a server (Harper, col. 6, lines 28-30, where the node can execute service applications, making it a server).

As per claim 26, Harper and Bliley further disclose the method of claim 23, further comprising the step: (e) the second computer transmits a response to the first computer (Harper, col. 7, lines 59-61, where the rejuvenation agent can be executed based upon the prediction of the learning algorithm operating on the global history system of Bliley, col. 4, line 57, through col. 5, line 15).

As per claim 27, Harper and Bliley further disclose the method of claim 26, further comprising the step: (f) the second computer stores the notification of the exceptional event in a second database (Bliley, where all information is stored in the fault log structure, which is part of the storage system that is being interpreted to be a second database containing all the various storage units, col. 4, lines 15-22).

As per claim 28, Harper and Bliley further disclose the method of claim 27, further comprising the step: (g) the second computer stores the response in the second database (Bliley, col. 4, lines 6-14, where the storage of repair data would include the responses sent in reply to the exceptional events).

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is provided on form PTO-892.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua A. Lohn whose telephone number is (571) 272-3661. The examiner can normally be reached on M-F 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAL



**SCOTT BADERMAN**  
**SUPERVISORY PATENT EXAMINER**